

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CA 06-153

OCTOBER 4, 2006

DAVID BRISTOW and CLIFF
FERREN

APPELLANTS

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV03-647]

V.

HONORABLE JAMES MOODY,
JUDGE

RANDY MOUROT

APPELLEE

APPEAL DISMISSED

This is an action by appellants David Bristow and Cliff Ferren to recover their investments in Contract Mail Holding, Inc. (CMH). In 2003, they sued CMH, appellee Randy Mourot, John Doe, and Jane Doe for fraud, breach of contract, and violation of the Arkansas Securities Act. After receiving a consent judgment against CMH, they went to trial against Mourot on the ground that he was liable to them as an agent who materially aided in the sale of the investments. The trial judge, sitting as fact-finder, ruled that Mourot was not liable, and appellants now appeal from that order. Because appellants' claims against the Doe defendants have not been resolved by court order, and no certificate has been executed pursuant to Ark. R. Civ. P. 54(b) (2006) allowing an appeal at this point, we must dismiss the appeal.

In order to discourage piecemeal litigation, an appeal may be taken only from a final judgment or decree, with certain limited exceptions. *See* Ark. R. App. P. – Civ. 2(a) (2006); *see also* Ark. R. Civ. P. 54(b) (2006) (permitting an appeal from an order resolving fewer than all claims against all parties only where a proper certificate is executed by the trial court). The issue of finality is a jurisdictional one that this court is required to raise on its own, even if the parties do not. *See Strack v. Capital Servs. Group, Inc.*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). Our supreme court has held on numerous occasions that, if an order does not resolve all claims against Doe defendants or contain a Rule 54(b) certificate, it is not a final, appealable order. *See Jones v. Huckabee*, 363 Ark. 239, ___ S.W.3d ___ (2005); *Moses v. Hanna’s Candle Co.*, 353 Ark. 101, 110 S.W.3d 725 (2003); *Shackelford v. Ark. Power & Light Co.*, 334 Ark. 634, 976 S.W.2d 950 (1998). Appellants’ Doe claims remain pending in this case; therefore, no final order has been entered, and we do not have jurisdiction to hear the appeal.¹

We also have some concern as to whether all causes of action in appellants’ complaint have been resolved. Appellants sued for fraud, breach of contract, and violation of the Arkansas Securities Act. The evidence at trial and the trial court’s findings focused solely on the Securities Act violation. However, because the relevant portion of the Act, Ark. Code

¹The supreme court fashioned an exception to the Doe rule in *D’Arbonne Construction Co. v. Foster*, 348 Ark. 375, 72 S.W.3d 862 (2002), where a jury apportioned 100% of the fault to non-Doe defendants. That exception does not apply here because there has been no apportionment of fault in such a manner that would necessarily exclude future recovery against a Doe defendant.

Ann. § 23-42-106 (Repl. 2000), is a general “civil liability” statute, it may be that appellants’ fraud and breach-of-contract claims were necessarily encompassed in the Securities Act claim. We will consider that to be the case, but if we are incorrect, we caution appellants that they must either dispose of those claims or obtain a Rule 54(b) certificate to invoke this court’s jurisdiction.

Appeal dismissed.

GLADWIN and BAKER, JJ., agree.